ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
JOHN MAUZY PITTMAN, CHIEF JUDGE

DIVISION IV

CACR07-828

March 12, 2008

ALVIN LEMARK PUGH
APPELLANT

V.

STATE OF ARKANSAS
APPELLEE

APPEAL FROM PULASKI COUNTY CIRCUIT COURT, SECOND DIVISION [NOS. CR-06-4321; CR-03-4410]

HON. CHRISTOPHER PIAZZA, JUDGE

AFFIRMED

The appellant was charged with possession of a controlled substance with intent to deliver and simultaneous possession of drugs and firearms. In addition, the State moved to revoke appellant's probation that had been ordered after a prior conviction for possession of a controlled substance. After a bench trial, he was found guilty of the new offenses and was found to have violated the terms of his probation by committing them. He was sentenced to ten years' imprisonment for the new offenses and ten years' imprisonment for the prior offense, to be served concurrently. On appeal, appellant argues that the evidence is insufficient either to support his convictions or to find that he violated the conditions of his probation. We affirm.

We will not second-guess credibility determinations made by the factfinder when reviewing a challenge to the sufficiency of the evidence to support a criminal conviction. *Stone v. State*, 348 Ark. 661, 74 S.W.3d 591 (2002). Instead, we view the evidence in the light most favorable to the State and consider only the evidence that supports the finding of guilt. *Id*. We affirm the conviction if there is substantial evidence to support it. *Hughes v. State*, 74 Ark. App. 126, 46 S.W.3d 538 (2001). Substantial evidence is evidence of sufficient force and character to compel a conclusion one way or the other with reasonable certainty, without resorting to speculation or conjecture. *Crutchfield v. State*, 306 Ark. 97, 812 S.W.2d 459 (1991).

Viewed in that light, the record shows that appellant was driving at approximately 3:00 a.m. when he was stopped by a police officer because of a defective headlight. The officer requested appellant's driver's license. Appellant produced no license, and, in responding to the officer's queries, he gave an alias and two different birth dates. Appellant was also observed fidgeting, reaching under the bench-type driver's seat, under the folded armrests, and into his pockets. The officer asked appellant to exit the vehicle, patted him down, and placed him in the back seat of his patrol car. The officer then returned to the stopped car and questioned the passenger, Shanice Davis. Ms. Davis identified herself correctly. As the officer was questioning her, he saw a Styrofoam cup with a bagged, off-white, rock-like substance protruding from under the armrest. The substance was later determined to be crack cocaine. Ms. Davis denied any knowledge of the drugs. The officer retrieved the substance and returned to appellant, who stated adamantly that Ms. Davis knew nothing about the drugs.

The officer placed appellant under arrest. He then continued his search of the car and found a nine-millimeter pistol, loaded and with a round chambered, under the driver's seat.

Appellant argues that the evidence is insufficient to show that he possessed the drugs and weapon because he was not the sole occupant of the vehicle. We do not agree. It is true that, to convict a person of possessing contraband, the State must show that the defendant exercised control or dominion over it. *Stanton v. State*, 344 Ark. 589, 42 S.W.3d 474 (2001). It is also true that joint occupancy, alone, is insufficient to establish possession or joint possession. *Id.* However, neither exclusive nor actual, physical possession is necessary to sustain a charge. *Bailey v. State*, 307 Ark. 448, 821 S.W.2d 28 (1991). Constructive possession is sufficient. *Id.* Constructive possession may be implied when the contraband is in the joint control of the accused and another. *Fultz v. State*, 333 Ark. 586, 972 S.W.2d 222 (1998). The State must establish that (1) the accused exercised care, control, and management over the contraband and (2) the accused knew the matter possessed was contraband. It offered substantial evidence of such in this case. Knowledge that the items possessed were contraband was adequately established. Here, the nature of the pistol was apparent to anyone, and it can be reasonably inferred that appellant, who had a prior conviction for drug possession and who was fidgeting as described above, knew that a plastic bag containing an off-white, rock-like substance found partially concealed in an automobile was very likely to contain contraband. Care, control, and management is adequately established by the evidence that the contraband was within appellant's reach, and appellant himself vehemently denied that the contraband

belonged to the only other occupant of the vehicle. We hold that the evidence is sufficient to support appellant's convictions.

In reviewing the sufficiency of the evidence to support appellant's probation revocation, we must consider all the evidence in order to determine whether the trial court's finding is clearly against the preponderance thereof. *Carruthers v. State*, 59 Ark. App. 239, 956 S.W.2d 201 (1997). Appellant testified that he borrowed the car that he was driving from a known drug-dealer and that appellant had no knowledge of the contraband's presence. However, the trial judge was not required to believe this self-serving testimony, especially in light of the testimony that appellant appeared to be attempting to conceal something as he provided the arresting officer with an alias. *See id.*

Affirmed.

GLOVER and MILLER, JJ., agree.